

Statement of PPL Montana
Before the Natural Resources Committee
Of the Montana State House
Regarding House Bill No. 40

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Mr. Chairman, Members of the Committee.

My name is Holly Franz. I represent PPL Montana LLC. I've been a water lawyer and lobbyist for over 20 years now. In my law practice, I represent a variety of clients including hydropower, ag, and municipal. I have participated in many DNRC contested case hearings representing both applicants and objectors.

HB 40 amends DNRC's administrative process for considering applications for new water rights and changes to existing water rights. HB 40 is, in part, a response to the recent *Bostwick* decision from a Bozeman district court. In *Bostwick*, the district court ruled DNRC's finding that a permit application was correct and complete was the same as finding that the criteria for the issuance of the permit had been met.

The *Bostwick* district court also ruled that the requirement in 85-2-310 that DNRC "shall grant, deny, or condition an application" within a particular time frame is mandatory, and DNRC must issue the permit without conditions if no other decision is issued before the time deadline. The *Bostwick* decision is now on appeal to the Montana Supreme Court.

Other judicial districts have ruled counter to the *Bostwick* decision, and we now have a situation where the rules applying to DNRC contested cases are different in the Bozeman area as opposed to the rest of the state. This is the time for the legislature to step in and improve DNRC's process regardless of the outcome of the *Bostwick* case.

HB 40 does this in a number of ways. First, it clarifies that a correct and complete application is only the starting point for DNRC's consideration of an application.

Second, HB 40 allows for a preliminary decision by DNRC early in the process. Under HB 40, objectors do not have to get involved in the process until the agency determines the proposal has merit. This is good for senior water right holders who now have to file one objection after another to proposals that may have no chance of succeeding. It is also good for the applicants who will know, early in the process, DNRC's concerns about their application and can work to address those concerns.

Third, HB 40 provides procedural due process for both applicants and objectors. Importantly, it maintains the burden of proof on the applicant and provides for a meaningful appeal of DNRC's determination.

Many of the stakeholders in the DNRC permitting process met last week with Rep. Cohenour and agreed on a number of amendments to improve the bill. PPL Montana supports the bill with the amendments that will be proposed by Rep. Cohenour. PPL Montana is continuing to work with other stakeholders to consider additional amendments that may improve the bill.

In my opinion, this is the most important water rights bill that you will consider this session. While administrative procedure may not appear that intriguing, it is imperative that DNRC process applications and objections in a fair manner without undue delays.

I urge the committee to favorably consider HB 40 and the amendments proposed by Rep. Cohenour.